

BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Closed Captioning and Video Description  
of Video Programming )

Implementation of Section 306 of the  
Telecommunications Act of 1996 )

Video Programming Accessibility )

MM Docket No. 95-176

**REPLY COMMENTS OF  
PENNSYLVANIA CABLE & TELECOMMUNICATIONS ASSOCIATION**

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Its Attorneys

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To: The Commission

**REPLY COMMENTS OF PENNSYLVANIA CABLE &  
TELECOMMUNICATIONS ASSOCIATION**

Pennsylvania Cable & Telecommunications Association ("PCTA"), by its attorneys, submits these Reply Comments in the Commission's Notice of Proposed Rule Making ("NPRM") in the above-captioned proceeding.<sup>1</sup> PCTA is a trade association representing the cable operators of Pennsylvania.

In accordance with the directives of the Telecommunications Act of 1996 which, through its addition of Section 713 to the Communications Act of 1934 ("Communications Act"),<sup>2</sup> the Commission is required to prescribe rules and implementation schedules for the

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<sup>1</sup>FCC 97-4 (released January 17, 1997).

<sup>2</sup>Telecommunications Act of 1996, Pub. L. 104-104, § 305(b), 110 Stat. 56 (1996).

captioning of video programming. The Commission's NPRM describes and defines the closed captioning requirements, determines the programming classes which will be subject to these requirements and proposes mechanisms for compliance with and the enforcement of the requirements. PCTA supports the important goal of making video programming fully accessible to persons with hearing disabilities and commends the efforts the Commission has made in this regard. PCTA offers comment, however, on the specific categories of programming which the Commission should exempt from mandatory captioning requirements.

Section 713(d)(1) allows the Commission to exempt from the closed captioning requirements discrete classes of programming which it concludes would be "economically burdensome to the provider or owner of such programming."<sup>3</sup> The NPRM discusses several different classes of programming and proposes and/or seeks comment on exemption for each category.<sup>4</sup>

**I. PEG Access Programming Should Be Exempted From Closed Captioning Requirements.**

Citing the typically small production budget of programmers of public, educational and government ("PEG") access program providers, the Commission concludes that the cost of captioning would place a prohibitively large economic burden on the producers of such

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<sup>3</sup>47 U.S.C. § 613(d)(1).

<sup>4</sup>NPRM at ¶¶ 72-84.

programming<sup>5</sup> and, therefore, requests comment on whether PEG access programming should generally be exempted from closed captioning requirements.<sup>6</sup> PCTA strongly urges the Commission to exempt PEG access programming from its closed captioning requirements without exception. As the Commission has concluded, most PEG channels are low-cost operations. They are often staffed by volunteers, involve minimal equipment and, accordingly, simply lack the resources to provide captioning. PCTA recognizes that while PEG programming, by its very definition, has a significant public interest value, as many parties to this proceeding have already emphasized, captioning expenses would so increase the cost of PEG access programming that it could no longer be offered to any of the viewing community, whether hearing impaired or not. See, e.g., Comments of National Cable Television Association at 24; Comments of US West; Comments of Access Fort Wayne; Comments of Chicago Access Corporation; Comments of the City of Pittsburgh; Comments of Community Access Center and Comments of Dayton Access Television.

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<sup>5</sup>Closed captioning is typically done in one of three ways. For a cost estimated to be \$800 to \$2,500 per hour, the dialogue of a program can be transcribed by a post-production company and either encoded onto a master tape to be telecast or transmitted with the program at the time it is aired. Through "real time" closed captioning, the audio portion of a program can be transcribed as the program airs. Real time captioning costs are estimated at \$120-\$1200 per hour. Additionally, for scripted news productions, there is electronic newsroom captioning ("ENR") through which captions come from the text in the station's news script computers. ENR captioning is virtually cost-free once the equipment is purchased but the equipment costs are estimated at \$2,500 to \$5,000. Additionally, captions must often be reformatted when programming is retransmitted to another video provider. Estimates of reformatting costs range from \$350 to \$450 per hour. NPRM ¶ 18-22.

<sup>6</sup>Id at ¶ 74.

Additionally, PEG Access channels and programming are the products of negotiation between local franchising authorities and the cable operators. Mandatory closed captioning could so reduce operators' ability to provide PEG access programming that their commitment to broadcast an hourly minimum would be compromised. If captioning is at all to be a feature of access programming, it should be the result of discussions between the parties most affected--the franchising authority and the operator.

**II. Cable Operator Local Origination Programming Should Also Be Exempted From Closed Captioning Requirements.**

The application of closed captioning requirements would be similarly burdensome for cable operator local origination ("LO") programming. LO is offered by individual cable operators on a voluntary basis and, like PEG access programming, is operated on a minimal budget which would not be able to absorb the additional costs of providing closed captioning. Yet with the commitment of volunteers and a significant donation of resources, these cable companies are able to provide a variety of programming that would otherwise be unavailable through any other medium. Local church services, high school athletic and fundraising events, annual holiday parades, city council meetings and other locally relevant events are all routinely covered through local origination programming. Some PCTA member companies also produce and broadcast annual telethons to benefit the local chapters of Easter Seals, the American Cancer Society and similar charitable causes which, in some cases, raise tens of thousands of dollars over the course of a day.

Requiring captioning of this unique, local interest programming would likely lead to a reduction of these voluntary and valuable community efforts. If forced to choose between

absorbing the prohibitive cost of captioning or discontinuing LO programming, program providers will undoubtedly elect to end this service. Cable local origination programming must therefore be included in the Commission's classes of exempted programming.

**III. An Analysis Under the Commission's Factors Demonstrates That Regional Cable Network Programming Should Also Be Exempted From The High Cost Of Providing Closed Captioning.**

The Commission has set out the following factors to be considered in finding that a class of programming qualifies for exemption from closed captioning requirements as economically burdensome: relative market size, degree of distribution, audience ratings or share, relative programming budgets or revenue basis, lack of repeat value, or a combination of factors.<sup>7</sup> On consideration of these factors, the characteristics of programming provided by regional cable networks make a compelling case for exemption from the closed captioning requirements.

Through regional cable networks, cable companies collectively offer coverage of events which are of interest to their respective communities and viewers. Pennsylvania cable companies, for instance, have established and supported the Pennsylvania Cable Network ("PCN") for more than twenty-five years. As more fully described below, PCN offers its viewers a localized version of C-SPAN type public affairs programming and educational programming.

The budget for producing and cablecasting this programming, however, is quite limited. For example, the annual PCN budget is only \$1,500,000 or \$180 per hour of

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<sup>7</sup>NPRM at ¶ 71.

programming. In addition to production costs, these funds must cover administrative expenses, salaries, rent, and equipment maintenance and purchases. Typically, regional networks like PCN are non-profit enterprises whose primary (if not only) funding source is subscriber payments by participating cable systems. Their budgets have no flexibility for the significantly increased costs that closed captioning would require.

Second, by its very definition, regional network programming is local in nature with appeal only to a local audience. Regional network programming, therefore, can capture only a minor part of the local audience share. The relevance and appeal of a political, public affairs or social event featured in regional network programming typically is restricted to a particular community. The distribution of regional network programming is similarly limited. Notably, with its service to 1.5 million households, PCN reaches only 33 percent of the 4,541,660 television households in the state of Pennsylvania.<sup>8</sup>

The combined impact of limited distribution, minimal audience share, a singular revenue source and a tight budget, justify an exemption for regional network programming from closed captioning requirements. Collectively, these characteristics reinforce the “small scale” nature of this programming and, thus eliminate any genuine possibility that its resources could successfully both sustain closed captioning costs and continue to provide this unique programming. The modest distribution and audience share minimize the opportunity to increase viewers. Limited viewership restricts the number of subscriber fees. Low subscriber fees, in turn, impact the size of the budget. A restricted budget, additionally,

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<sup>8</sup>Television and Cable Factbook, Cable at F-10.

prevents increases in distribution, and low distribution inhibits growth in audience share. Clearly, the imposition of closed captioning requirements on programming whose resources and capabilities are this constrained would cripple, if not eliminate, the important service it provides.

For example, PCN's provision of C-SPAN-like programming on the state level consists of live sessions of the Pennsylvania House and Senate, legislative committee meetings and conferences, Public Utility Commission meetings and numerous public events throughout the year. Like C-SPAN, PCN provides coverage of these events without interruption. Also like the national C-SPAN model, PCN is funded on a non-profit, private basis and receives no government funding to provide its programming.

Because the nature of the PCN programming is 24-hour, "gavel-to-gavel" coverage of events which primarily consist of speeches, debates, press conferences and other forms of "the spoken word," captioning costs for this kind of programming would be enormous. With its weekday programming of 12 hours each day and an 12 additional weekend hours, even the least expensive, "real time" captioning option described by the Commission in its NPRM would add a cost of \$120 for each hour of programming (which does not include the additional costs for any necessary reformatting when the programming and captioning are distributed to member systems or the costs of hiring additional personnel to manage these procedures).<sup>9</sup> PCN's annual costs would increase by at least \$449,280 -- an amount which is nearly one-third of the entire annual budget for PCN!

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<sup>9</sup>NPRM at ¶ 22.

The provision of educational programming through PCN is similarly constrained. While home learning, educational support and other educational programs have important value to the enrichment of Pennsylvania viewers, the high costs associated with captioning this programming will virtually eliminate its availability. PCN offers a range of educational programs from basic literacy training to college level courses. Educational programming is offered three hours daily during the week and five hours each day on the weekend for a total of twenty-five hours each week. Again, using even the most conservative hourly rate suggested by the FCC,<sup>10</sup> the captioning costs for this programming would add an additional \$156,000 expense to the PCN budget in addition to the captioning costs for its public affairs programming. Clearly, the financial burden of captioning -- a burden which was estimated with the lowest estimate of closed captioning costs -- would simply force PCN and other similar networks to cease offering this kind of programming.

Given the inherent utility and benefits of educational programming for both the hearing and hearing-impaired populations, PCTA shares the Commission's concern that a complete exemption for educational programming may deprive the viewing audience of complete access to significant and valuable programming.<sup>11</sup> PCTA similarly acknowledges the value and merit in making public affairs programming accessible to hearing-impaired viewers. Yet because a considerable portion of this programming is generated by entities such as regional cable networks whose limited viewership as well as production budgets and

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<sup>10</sup>Id.

<sup>11</sup>Id. at ¶ 76.

restricted funding sources allow no room for additional significant expenses, PCTA urges the exemption of regional programming provided through such networks.

Service Electric Cable TV, Inc. of Allentown ("SECTV") provides a strong example of the kind of regional programming endangered by closed captioning requirements. SECTV has operated a local programming service located on channel 2 of their cable system and referred to locally as "Super 2." Super 2 has operated since 1968, very much as a local television station with the exception that all their programming originates locally. They provide their programming to more than 90,000 households in their service area and an additional 70,000 households in the service areas of cable operators serving Mahanoy City and Wilkes Barre.

Super 2, in addition to producing a nightly newscast which for years was the Lehigh Valley's only local newscast (now a public TV station also produces local news), also carries high school sports programming. This includes live and taped coverage of high school basketball, football, wrestling, soccer, and hockey. They also cover local bowling and golf tournaments, as well as amateur and professional boxing matches in the Allentown area.

Super 2 also covers special events like the annual Allentown Fair, the St. Patrick's Day Parade, the Puerto Rican Day Parade, the Halloween Parade, school spelling bees, charity telethons (like the annual Easter Seals Telethon) and features weekly religious programming, a polka music show, and other events of interest to the local community.

Super 2, like other cable local programming providers, operates at a loss. This programming is provided as a community service and any requirements imposed upon them

which increase their production costs automatically decrease the amount of programming they are able to produce.

**IV. The Financial Implications of Providing Closed Captioning Further Compel An Exemption for Local and Regional Sports Programming.**

Budgetary constraints also justify a closed captioning exemption for local and regional sports programming. In its NPRM, the FCC states that it does not believe that all local sports programming should be exempt from captioning.<sup>12</sup> It acknowledged, however, that there may exist "types of sports programming for which a closed captioning requirement would be burdensome, such as locally produced college or high school sports."<sup>13</sup> PCTA submits that all local and regional sports programming should be granted an exemption from the captioning requirements. While nationally distributed programming networks have the resources to caption their programming, a regional sports network, for example, simply would not have the subscriber base to generate the resources necessary to underwrite the cost of captioning the sporting events it covers.

Fox Sports Pittsburgh ("FSP"), for example, is a regional sports network that serves two million households in a five state area. While the bulk of their subscribers are in western Pennsylvania, they also serve eastern Ohio, northern West Virginia, northern Maryland, and eastern New York.

FSP is one of ten regional sports networks owned by Fox Television and Liberty Media. Each contributes some regional programming for use throughout the network (i.e.,

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<sup>12</sup>NPRM at ¶ 84.

<sup>13</sup>Id.

Fox Sports Los Angeles contributes beach volleyball coverage) and produces its own programming for exclusive local use. FSP covers professional sports contests which include 70 Pittsburgh Penguin hockey games this season and 85 Pittsburgh Pirate baseball games. They also carry collegiate sports, such as basketball and football games of regional teams like the University of Pittsburgh, Pennsylvania State University and Duquesne University.

The regional network also produces studio shows, including a daily one-hour "Sports Beat" program and a twice weekly, one-hour feature show called the "Players Show."

While all this programming is advertiser-supported and contributes to the commercial success of the network, FSP also produces a wide variety of high school athletic events for which they realize no profit. For example, they recently carried a high school hockey tournament, as well as the championship games in football and basketball of the Western Pennsylvania Inter-Scholastic Athletic League. All this programming is carried at a loss to the network. They do so because they believe that is part of the mission of a regional sports network and in the belief that it attracts subscribers which benefits their advertiser supported telecasts. However, were they required to provide closed captioning for these high school athletic events, they would no longer cover these events.

Inadequate financial resources is an even greater problem for the local origination coverage of community high school, college and intramural sporting events. Most are non-commercial cablecasts which depend on the commitment of student volunteers, community fundraising and benevolent production companies to achieve broadcast of their events. Further, because of the local interest of the featured teams or individuals, distribution of the programming is necessarily limited. These factors, alone, demonstrate that mandatory

captioning would be economically burdensome for local college and high school sports events.

Moreover, for sports events, dialogue and speech are far less important elements of the experience. The essence of a sporting event is the "play," the "action," the "strategy" or the "skill." Significantly, those who actually attend sporting events do not have (or even need) the benefit of captioning to follow and understand the event. Closed captioning for a sports telecast is equally unnecessary when balanced against the enormity of the costs to provide it on a per viewer basis. Further, the identification of players, the communication of statistics, the illustration of scores or any other information that may otherwise be undeliverable to the hearing impaired viewer is routinely conveyed by the use of strategically timed and placed sports graphics. The additional display of closed captions would be extraneous and redundant. In view of the high costs of captioning sports programming and the nominal value it would add to the experience of the event, a decision to mandate their captioning is unreasonable.

PCTA, therefore, recommends that the Commission include all local and regional sports programming as an exempted class of programming. Should the Commission decline this recommendation, at the very least, on consideration of the especially restricted budgets and distribution for the broadcast of local high school, intramural and collegiate athletic events, locally-produced broadcasts of these events should be exempted from closed captioning requirements.

**V. Conclusion.**

For these reasons, PCTA encourages the Commission to unconditionally exempt PEG access and cable operator local origination programming. PCTA similarly recommends exemption for cable regional network programming. Lastly, PCTA urges that local and regional sports programming be deemed exempt from closed captioning requirements or, at the very least, that locally produced collegiate and high school athletic events be excluded from captioning requirements.

Respectfully submitted,

PENNSYLVANIA CABLE &  
TELECOMMUNICATIONS ASSOCIATION

A handwritten signature in black ink, appearing to read 'C. S. Walsh', written over a horizontal line.

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